IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 563 of 1993

For Approval and Signature:
HON'BLE MISS JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHRI RAMESHBHAI SHAMJIBHAI - Applicant(s)

Versus

CHAMPABEN,THE WIDOW OF DECEASED VIRCHAND MAVJI & 4 - Opponent(s)

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Appearance :
MR SURESH M SHAH for Petitioner No(s).: 1 - 1.
MR NAGIN N GANDHI for Respondent No(s).: 1, 2, 3, 4,5.
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CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT
Date : 22/07/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 31st March, 1993 passed by the learned District Judge, Bhavnagar in Regular Civil Appeal No. 107 of 1984, the appellant-defendant in Regular Civil Suit No. 402 of 1979,

has preferred the present Revision Application under Section 29 (2)of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 [hereinafter referred to as, "**the Rent Act**"].

The respondents-plaintiffs are the owners of the building situated at Bhavnagar. Part of the said building comprising a room, kitchen and a store room was leased to the petitioner-defendant for a monthly rent of Rs. 25/=. In Regular Civil Suit No. 545 of 1966, the standard rent of the suit premises was fixed at Rs. 25/=. The plaintiffs instituted Regular Civil Suit No. 402 of 1979 in the Court of learned Civil Judge [JD], Bhavnagar for recovery of possession of the suit premises and of the amount of rent due on the ground, *inter alia,* that the defendant was in arrears of rent since 1st June, 1975 and that he was not ready and willing to pay the rent. The suit was contested by the defendant vide written statement Exh. 12. He denied the allegations made in the plaint. Though he did admit that the contractual rent of the suit premises was Rs. 25/= per month, he denied that Rs. 25/= was the standard rent of the suit premises. He denied that he was a tenant in default or that he was in arrears of rent, as alleged. *Nevertheless*, in answer to the notice of demand, he did send the money order for the amount demanded. The learned Civil Judge, by judgment and order dated 16th April, 1984,

allowed the suit and passed decree for possession in favour of the plaintiff. The learned Civil Judge recorded a finding that the defendant was in arrears of rent since 1st June, 1975, as alleged; that the standard rent of the suit premises was Rs. 25/= per month as decided in the earlier proceeding; that the notice of demand as envisaged by Section 12 (2) of the Rent Act was duly served upon the defendant; and that the defendant failed to pay the amount of rent due within one month from the date of the receipt of the notice. The matter was covered by Section 12 (3)(a) of the Rent Act and the plaintiffs were entitled to decree for possession. Feeling aggrieved, the defendant preferred Regular Civil Appeal No 107 of 1984 in the Court of learned District Judge, Bhavnagar. The Appeal was dismissed on 31st March, 1993. Therefore, the present Revision Application.

Mr. Shah has assailed the judgment of the lower appellate Court. He has submitted that apart from the agreed rent/standard rent of Rs. 25/=, the defendant was liable to pay the House Tax and Education Cess. The House Tax and Education Cess are payable every year. Hence, the rent cannot be said to be payable by month. As all conditions mentioned in Section 12 (3)(a) of the Rent Act were not satisfied the defendant was entitled to protection under Section 12 (3)(b) of the Rent Act. It is,

therefore, required to be examined whether the defendant had complied with the conditions mentioned in Section 12 (3)(b) of the Rent Act and whether he was entitled to protection under Section 12 (3)(b) of the Rent Act. In support thereof he has relied upon the evidence of the plaintiff [Exh.50]. He has submitted that in cross examination, the plaintiff did admit that the defendant was required to pay the house tax and the education cess.

I am unable to agree with Mr. Shah. As borne out from the decree passed by the learned Civil Judge [JD], Bhavnagar in Regular Civil Suit No. 107 of 1971 [Exh.51], in the above referred Regular Civil Suit No. 545 of 1996, the standard rent of the suit premises was fixed at Rs. 25/= per month inclusive of water and drainage charges. In the present proceeding, the plaintiff had never demanded house tax or education cess from the defendant. In the written statement, the defendant also did not raise the plea that he was required to pay house tax and the education cess. In absence of the pleadings and evidence to that effect, the defendant cannot be permitted to rely upon part of a statement in isolation of the rest of the evidence to urge that the defendant was liable to pay the house tax and the education cess. As recorded hereinabove, the standard rent of Rs. 25/= determined in Civil Suit No. 545 of 1966 was inclusive of the water tax and drainage

charges. It was neither the plea of the plaintiff nor of the defendant that the defendant was liable to pay house tax or education cess nor did the plaintiff demand any amount beyond the standard rent of Rs. 25/= per month. Hence, in my view, the Courts below have rightly held that the rent was payable by month. Further, though the defendant raised a specific plea that in answer to the notice of demand he had paid the amount demanded by a money order and though in his oral evdience the defendant did depose that he had sent a sum of Rs. 1,000/= and Rs. 125/= by two money orders, he failed to prove the remittance of Rs. 1,000/=. All that the defendant could prove was payment of Rs. 125/= made by money order. The Courts below have rightly held that the defendant was in arrears of rent for six months and more. As the standard rent was determined in Civil Suit No. 545 of 1966, the dispute as to the standard rent raised by the defendant in answer to the suit notice and in the written statement cannot be said to be genuine or *bona fide*. Hence, in my view, the Courts below have rightly held that all conditions mentioned in Section 12 (3)(a) of the Rent Act did exist. The decree for eviction was, therefore, inevitable.

No case for interference is made out. Revision Application is dismissed with cost. Rule is discharged.

Interim relief stands vacated.

{Miss R.M Doshit, J.}

*Prakash**